

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,208

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying his application for General Assistance with the cost of his housing and a decision reducing his Food Stamp benefits due to an increase in income.

FINDINGS OF FACT

1. The petitioner is a single man who was found eligible for \$634 in Social Security disability benefits beginning on August 1, 1993. He lives in an apartment which rents for \$300 per month, which includes no utilities. The petitioner also rents a storage unit for \$67 per month to shelter his personal effects which won't fit into his apartment.
2. Since June of 1993, the petitioner has paid his rent into an escrow account pursuant to an order issued by the court on May 26, 1993, as part of an eviction action filed by his landlord. The petitioner has paid his rent timely every month and is in no imminent danger of losing his housing since the case is in the discovery phase and will not be resolved for some time in the future.
3. Prior to his receipt of Social Security benefits, the Department of Social Welfare paid \$198 per month

toward his rent during the months of May, June and July 1993. 4. On July 20, 1993, the Department mailed a notice to the petitioner that his Food Stamp benefits would decrease from \$111 to \$18 per month based on his anticipated increase in income on August 1 (\$634 from Social Security).

5. On July 27, 1993, the petitioner made another application for assistance with his housing payment, due in five days, for the month of August. As the petitioner is a single person with no dependents, the Department considered his application under the General Assistance program. On July 28, 1993, the petitioner's application was denied because his income in the last thirty days exceeded Department standards for a one person household (\$421

maximum) and because his situation was not considered "catastrophic".

6. The petitioner does not dispute the accuracy of the Department's information with respect to his SSI and Social Security income. He claims, however, that he has monthly expenses which exceed his income as follows: \$300 for rent; \$67 for storage rent; \$250 monthly phone bill; \$150 fuel; \$62.50 for van maintenance and insurance; \$150 for food; \$20 for electricity; \$14 monthly for electrician's insurance; and \$26.50 monthly for renters' insurance. The total of his expenses is \$1,040 per month.

7. During the course of the hearing, the petitioner revealed that in addition to his SSI income, he received a retroactive check for \$8,000 from the Social Security administration on July 28, 1993, the day after his GA application, and that he had income during July and August of between \$660 and \$880 for electrical work he performed during that time. At the time of the hearing (August 30, 1993), the petitioner stated that he had spent some of the lump sum on the August rent and still had some of the retroactive benefit left, although he could not say how much.

8. None of the income listed in paragraph 7 above was reported to the Department and was not, therefore, considered in the calculations of his Food Stamp and GA eligibility for the month of August 1993.

### ORDER

The Department's determination that the petitioner is ineligible for GA is affirmed. The Department's determination as to the petitioner's eligibility for Food Stamps is reversed and remanded for a new calculation of eligibility following verification of additional sources of income reported by the petitioner at hearing.

### REASONS

Under regulations governing the General Assistance program, individuals who are not able-bodied are only eligible for benefits if they meet certain criteria including, among others, "emergency need", exhaustion of all available income and resources, and an income test. W.A.M. § 2600 (B)(1) and (C) The income test specifically requires that applicants for GA "have received during the 30-day period immediately prior to application net income computed pursuant to General Assistance regulations which is below the applicable ANFC payment level for that size household in similar living arrangements." W.A.M. § 2600(C)(1)

Income under the regulations "means the total gross sum of all monetary remunerations received from any source for any reason." W.A.M. § 2608 Social Security payments, SSI and income from self-

employment are all specifically identified in the GA regulations as countable sources of income. W.A.M. § 2608(4) and (7). That income after deductions<sup>(1)</sup> is compared to the ANFC payment level which for the petitioner would be \$421 per month. See W.A.M. §§ 2245.2, 2245.33 and P2210(c).

In this matter, the petitioner had at least \$491 in income during the 30 days preceding his GA application, and likely, based on his testimony, had considerably more. Because the petitioner had income over the allowed limit (\$421) during the thirty days prior to his application, he could not receive GA unless he were facing a "catastrophic situation," in which income standards and other requirements are waived. W.A.M. § 2600(A).

The regulation allowing for assistance in "catastrophic situations" provides as follows:

Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is a result of failure on the part of the applicant to explore potential resolution of the problem:

...

b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional, serious property damage caused by the applicant; repeated instances of raucous and illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to efforts to correct substandard housing.

... W.A.M. § 2602<sup>(2)</sup>

Although the petitioner is involved in eviction proceedings, he has not been evicted by a Court and has a place to live at least during the pendency of the action, which at present is mired in the "discovery" process. If the petitioner failed to escrow his rent, it is possible that the process would be cut short and an immediate eviction order issue. However, the petitioner has presented no evidence that he was expecting to be unable to pay the August escrow. On the contrary, the evidence showed that the petitioner was expecting an increase in Social Security income and had considerable income from earnings on hand. Although the petitioner protests that his expenses are heavy, he also candidly admits that he has had adequate income to meet those expenses over the last couple of months, particularly since the arrival of the \$8,000 lump sum the day after his GA application. Although this last money was received after the application, it currently undercuts any assertion he might make that he actually faced an emergency or catastrophe with regard to paying his rent on August 1. It cannot be found that the facts of his situation meet the definition of "catastrophic situation" set out above.

What remains is the matter of the petitioner's Food Stamp reduction. The petitioner claims it was

erroneously made because it was based on a calculation which did not consider the true facts of his shelter situation. Specifically, he claims that not only his monthly rent but also his storage fee should have been used in calculating his actual shelter costs. It is very unlikely that shelter costs under the regulation could ever include the cost of storage for personal items since the regulations define shelter as premises "occupied by the household". F.S.M. § 273.9(d)(5)(i). However, facts revealed by the petitioner at the hearing, make it clear that the Department's calculations were undoubtedly erroneous for another reason-- the petitioner's failure<sup>(3)</sup> to give the Department information which was crucial to calculating his eligibility for Food Stamps. The Food Stamp Regulations clearly require that income, "from whatever source" be used in calculating benefits. F.S.M. § 273.9. A recalculation of benefits using those earned income amounts must now follow. The recalculation notice should explain in detail exactly how the petitioner's Food Stamp benefits were calculated, including the figures used to establish his shelter deduction so the petitioner might better understand how his allotment is determined.

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1. Deductions are allowed for such expenses as child support and dependent care and for earned income work expense deductions. None of those are applicable here, although, had the petitioner reported his earned income, the work deductions would have applied. See W.A.M. § 2608.1-2608.5.
2. The other "catastrophic situations" involve death of a family member, natural disasters, and emergency medical need, none of which is applicable in this instance.
3. Because this issue arose during the course of the hearing, no attempt was made to question the petitioner as to the circumstances surrounding the non-reporting of this income. No finding is made in this opinion as to whether the failure to report was intentional or inadvertent error.